

REMARKS

Reconsideration of the present application is respectfully requested in view of the following remarks. Prior to entry of this response, Claims 11-18 were pending in the application, of which Claims 11, 15, 16, and 18 are independent. In the Office Action dated October 5, 2006, Claim 16 was rejected under 35 U.S.C. § 101, Claims 11-12 and 14-15 were rejected under 35 U.S.C. § 102(b), Claim 12 was rejected under 35 U.S.C. § 103(a), and Claim 18 was allowed. Following this response, Claims 11-12, 14-16, and 18-24 remain in this application, Claims 19-24 being added by this Amendment. Applicants hereby address the Examiner's rejections in turn.

I. Allowance of Claims

Applicants respectfully request that the Examiner pass Claims 18 to issue.

II. Rejection of the Claims Under 35 U.S.C. § 101

In the Office Action dated October 5, 2006, the Examiner rejected Claim 16 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 16 has been amended and Applicants respectfully submit that the amendment overcomes this rejection and adds no new matter.

III. Rejection of the Claims Under 35 U.S.C. § 102(b)

In the Office Action, the Examiner rejected Claims 11-12 and 14-15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,801,717 ("*Engstrom*"). Claims 11 and 15 have been amended, and Applicants respectfully submit that the amendments overcome this rejection and add no new matter.

Amended Claim 11 is patentably distinguishable over the cited art for at least the reason that it recites, for example, “wherein transferring the merged information comprises, sending to the display device a pixel in a set that corresponds to the primary overlay surface if the pixel in the set that corresponds to the primary overlay surface matches a color key, and sending to the display device a pixel in a set that corresponds to the primary presentation surface if the pixel in the set that corresponds to the primary overlay surface does not match the color key.” Furthermore, amended Claim 15 is patentably distinguishable over the cited art for at least the reason that it recites, for example, “wherein transferring the merged information comprises, -sending to the display device a pixel in a set that corresponds to the primary presentation surface if the pixel in the set that corresponds to the primary presentation surface has an alpha value of 0; -sending to the display device a pixel in a set that corresponds to the primary overlay surface if the pixel in the set that corresponds to the primary presentation surface has the alpha value of 255; and -sending to the display device a pixel interpolated from the pixel in the set that corresponds to the primary presentation surface and the pixel in the set that corresponds to the primary overlay surface if the pixel that corresponds to the primary presentation surface has the alpha value between 0 and 255.”

In contrast, *Engstrom* at least does not disclose any of the aforementioned recitations. For example, *Engstrom* merely discloses a display device interface and associated methods for managing surface memory. (See col. 4, lines 26-30.) Consequently, in *Engstrom*, a surface includes a pixmap image, or other two-dimensional image data such as an array of depth values (z), or an array of

transparency values (alpha). (See col. 4, lines 30-33.) By invoking a function in the display device interface, applications can create a surface structure that represents one or more surfaces in *Engstrom*. (See col. 4, lines 33-37.) A flipping surface structure represents a front buffer, and one or more back buffers. (See col. 4, lines 37-40.) The display interface controls double and multiple buffering by performing a flip operation on a flipping structure. (See col. 4, lines 40-45.) In response to a request to "flip" a flipping structure, the flip operation swaps the underlying surface memory, but the flipping structure remains constant from the perspective of the application. (See col. 4, lines 45-47.) Consequently, in *Engstrom*, merging information using the aforementioned per-pixel alpha, z-order, or color-key merging processes is not disclosed. Rather *Engstrom* is completely silent regarding any of these transferring processes.

In short, Engstrom does not anticipate the claimed invention because *Engstrom* at least does not disclose any of the aforementioned recitations from amended independent Claims 11 and 15. Accordingly, independent Claims 11 and 15 each patentably distinguishes the present invention over the cited art, and Applicants respectfully request withdrawal of this rejection of Claims 11 and 15.

Dependent Claims 12 and 14 are also allowable at least for the reasons described above regarding independent Claim 11, and by virtue of their dependency upon independent Claim 11. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 12 and 14.

IV. Rejection of the Claims Under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected Claim 12 under 35 U.S.C. § 103(a) as being unpatentable over *Engstrom* in view of "Official Notice." Applicants respectfully traverse this rejection

The Examiner has taken Official Notice that, according to the Examiner, both the concept and advantages of including a firmware executable in a display interface driver are well known. (See Office Action, page 6, lines 13-15.) As a result, Applicants respectfully suggest that the Examiner has failed to make a *prima facie* case of obviousness. In order to make a *prima facie* case of obviousness, the Examiner must set forth prior art which teach or suggest every claim limitation. (See MPEP § 2143.) There is nothing in the prior art cited by the Examiner that discloses the subject matter of Claim 12. Accordingly, Claim 12 patentably distinguishes the present invention over the cited art, and Applicants respectfully request withdrawal of this rejection of Claim 12.

If the Examiner continues to rely on this unsupported contention, Applicants respectfully request the Examiner to provide support. See, In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on common knowledge without evidentiary support as sole or principal evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, *and the facts must be supported*, when called for by the

applicant, by an affidavit from the Examiner); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art and, if the Applicants traverse such an assertion, the Examiner *should cite a reference* in support of his or her position.).

V. New Claims

Claims 19-24 have been added to more distinctly define and to round out the protection for the invention to which Applicants are entitled. Applicants respectfully submit that these claims are allowable over the cited art and that they add no new matter.

VI. Conclusion

In view of the foregoing remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims. The preceding arguments are based only on the arguments in the Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Office Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding argument in favor of patentability is advanced without prejudice to other bases of patentability. Furthermore, the Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any

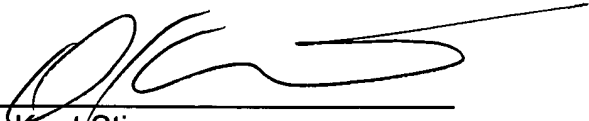
such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 13-2725.

Respectfully submitted,

Dated: January 4, 2007

By: _____


D. Kent Stier
Reg. No. 50,640

Merchant & Gould
P.O. Box 2903
Minneapolis, Minnesota 55402-9946
Telephone: 404.954.5066



DKS:mdc